

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5203 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DILAVARSINGH ANOPSINGH VAGHELA

Versus

BHARAT PETROLEUM CORPORATION LTD

Appearance:

MR TUSHAR MEHTA for Petitioner
MR GN SHAH for Respondent No. 1
SERVED for Respondent No. 2
MR KETAN A DAVE for Respondent No. 3
MR BHARAT J SHELAT for Respondent No. 4

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 09/10/96

ORAL JUDGEMENT

The grievance voiced by the petitioner in this Special Civil Application under Article 226 of the Constitution of India is that inspite of the fact that he was interviewed on 5th September, 1994 by the respondent No.2-Oil Selection Board (Gujarat) for award of retail outlet dealership of petrol pump of Bharat Petroleum

Corporation, result of the same has not been declared. Mr B L Shah, Co-ordinator, Oil Selection Board (Gujarat) (for short 'OSB') has filed affidavit dated 5.7.1995 stating that by letter dated 10.10.1994, the working of the OSB (Gujarat) was freezed by the Union of India in the Ministry of Petroleum and Natural Gas (MOP & NG) . It is further stated that even the three panels prepared by the erstwhile defunct superseded Board on 10.10.1994 were also kept in abeyance and were advised not to be communicated to the oil companies concerned. Mr B L Shah filed another affidavit dated 9.9.1995 stating that the State Level Coordinator and Ex-officio non-Member Secretary of OSB (Gujarat) is the Chief Divisional Manager of Indian Oil Corporation Ltd. at Ahmedabad. It is further stated that Mr R K Gupta who was the then Divisional Manager of IOC was the State Level Coordinator and Non-member Secretary of the previous Board. He has also stated that the Petroleum Ministry vide letter dated 1.1.1993 reconstituted the OSB statewise. It appears that the Board was constituted for a period of two years with effect from 1.1.1993 as under:

1. Hon'ble Justice P M Chauhan(Retd) - Chairman
2. Shri Depakbhai Babari - Member
3. Shri Jethabhai Parmar - Member

Mr Shah in his affidavit referred to the board presided by Justice P M Chauhan (Retd) as previous board. In para 6 of the affidavit, he has stated that the previous board had held interviews of applicants for other dealerships but since its recommendations were not communicated to the concerned Oil Company, the present Board is holding fresh interviews of all such applicants. It is further stated that even if the panel had been finalised by the previous Board, the present Board would ignore the same in view of the fact that the Board was frozen from 10.10.1994 to 5.6.1995. Justice P M Chauhan (Retd), Chairman of the OSB (Gujarat) and the two other members of the Board namely; Shri Jethabhai Parmar and Shri Deepakbhai Babaria have filed a joint affidavit stating that the subject interviews were held and the merit list of the selected candidates of six locations were prepared before 10.10.1994. Since Shri R K Gupta, SLC was on leave and out of headquarters for the entire week ending on October 9, 1994, the merit list could not be handed over to him before 10.10.1994. On October 10, 1994, Shri Gupta was instructed to come at 11.00 a.m. to the office of the OSB to collect the merit list but he did not turn up, and therefore, at 11 a.m. the Chairman handed over the list to Senior SLC Shri R J Dholakia to handover the same to Shri Gupta, when he comes to the OSB office to

collect the merit list. The Chairman also instructed Shri Gupta on telephone to collect the three merit lists from Shri R J Dholakia and other three merit lists from Member Shri Jethabhai Parmar during the course of the day. It is further stated that the Chairman and the members of the OSB had, at that time, no intimation about any instructions by the Government. In the evening at about 5 p.m., Shri R J Dholakia, Senior SLC informed the Chairman on telephone about the instructions of the Government not to prepare merit list of "ongoing interviews". Shri Jethabhai Parmar, Hon'ble Member of the Board was instructed by Shri D J Dholakia, Sr.SLC about such decision of the Government and he was asked not to attend the office. It is further stated that OSB (Gujarat) was appointed for a period of two years, the tenure of which was to be over only in December, 1994. It is asserted that OSB (Gujarat) presided by Justice Chauhan, legally and validly adjusted till the new Board was constituted in December 1994. In view of this the assertion of the SLC that the Board was frozen was denied. Shri R K Gupta, Deputy General Manager (LF & IML) of Indian Oil Corporation has filed an affidavit stating that at the relevant time, he was holding the office of the State Level Coordinator and Ex-officio Non-member Secretary of OSB (Gujarat). He has stated that the ex-officio non-member is not entitled to attend the meeting of the Board or sit in the interviews conducted by the OSB, his functions are purely administrative in nature, and as coordinator, coordinating between the members of the Board, Ministry of Petroleum and Natural Gas and the four Oil Companies in respect of whose dealership the Board is concerned. It is further stated that one of the functions as assessed is to receive the merit list from the Board and communicate the same to the concerned Oil Companies and also communicate to the Board the instructions received from the Ministry of Petroleum and Natural Gas from time to time. Shri Gupta has stated in para 5 as follows:

"5. I state that vide letter no.OSB(G)/RET/14 dated 10.10.1994, I conveyed to Regional Coordinator, Mumbai details of the interviews held and the merit panels released by the OSB (G) from its inception till 10.10.1994, i.e. the day from which further conducting of interviews and release or merit panels was kept in abeyance. The letter even though typed on 10.10.1994 was signed by me on 17.10.1994, and positions of later panels released by the Board on 14.10.1994 were also incorporated. A Copy of the said letter is annexed herewith and marked

Annexure "B". "

He further stated in para 6 of the affidavit that in the case of the three panels each given to him by the Board on 10.10.1994 and 14.10.1994, he had kept Hon'ble Chairman and Members of OSB fully informed and also personally explained to the Hon'ble Chairman the reasons for not sending the panels as he was duty-bound not to send the same in view of the instructions from the Corporate office.

Shri S P Ghan, Sr.Manager, Ahmedabad Division, Bharat Petroleum Corporation has filed affidavit stating that the Bharat Petroleum Corporation did not receive the merit panel names from the OSB (G). It is further submitted that as and when the same is received, the Bharat Petroleum Corporation Ltd. would be issuing the Letter of Intent in favour of the persons who is placed first in the merit panels. The relevant para reads as under:

"5) I say and submit that in the present case, all the applications received by our office were forwarded to the Oil Selection Board. However, the Bharat Petroleum Corporation Ltd. has not received the imerit panel names from the Oil Selection Board so far. I say and submit that as and when the same is received by the Bharat Petroleum Corporation Ltd. Letter of Intent would be issued to that applicant who is placed first in the merit panel."

2. I have heard the learned Counsel for the parties. The short controversy involved in the present Special Civil Application is as to whether the OSB presided by Justice P M Chauhan (Retd) was frozen as stated by Mr B L Shah in his affidavit? Mr H M Mehta, learned Sr. Central Government Standing Counsel, under the instructions of the officers of the Ministry of Petroleum and Natural Gas, has made a statement before ths Court on 4.10.1996 that prior to 21.12.1994, the Government of India has nothing on their record to suggest that they had issued instructions terminating or suspending the tenure of the then Chairman and Members of the OSB (G). He has further made a statement that no instructions were issued by the Government restraining the then OSB (G) from recommending the merit panels. On 4.10.1996, when Mr H M Mehta made this statement, Mr D K Rana, Sr.Officer of the Ministry of Petroleum and Natural Gas Commission was present in the Court along with the relevant record. In view of this statement, the matter is not required to

be probed further and it is to be accepted that the recommendations of the OSB presided over by Justice P M Chauhan (Retd) are legal and valid. The recommendations made by the said Board have been illegally withheld by the SLC.

3. In view of the aforesaid, this Special Civil Application succeeds and it is directed that the respondent SLC (State Level Coordinator), OSB (G) will forthwith send the merit panels prepared by the OSB presided by Justice P M Chauhan (Retd) to the Bharat Petroleum Corporation to deal with the matter in accordance with law.

4. At this sate, Mr G N Shah, learned Advocate expressed his apprehension that if the recommendations of the previous OSB (G) is considered, it will disturb the award of dealership for the reason that the five other applicants may also ask for the same treatment. The apprehension of Mr Shah is unfoundable for the reason that so far as the present application is concerned, there was an interim order to the effect that there will not be fresh interviews with respect to the dealership in Shastrinagar is concerned.

Rule made absolute to the aforesaid extent with no order as to costs.

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